

## Assembly Bill No. 445

### CHAPTER 412

An act to amend Section 664 of the Penal Code, relating to crime.

[Approved by Governor September 18, 1997. Filed  
with Secretary of State September 19, 1997.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 445, Pacheco. Crimes: attempts: sentencing.

Existing law generally provides that every person who attempts, but fails, to commit any crime shall be punished by  $\frac{1}{2}$  the term of imprisonment or fine provided for the completed crime. Notwithstanding this provision, a person guilty of attempted murder of a peace officer or firefighter, when the person knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, or attempted willful, deliberate, and premeditated murder of any person, shall be punished by imprisonment in the state prison for life with the possibility of parole. The minimum term of imprisonment for a person sentenced to life with possibility of parole is 7 years.

This bill would provide that a person guilty of attempted willful, deliberate, and premeditated murder of a peace officer or firefighter, when the person knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 15 years to life and that the person shall not be released prior to serving 15 years in confinement.

*The people of the State of California do enact as follows:*

SECTION 1. Section 664 of the Penal Code is amended to read:

664. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts, as follows:

(a) If the crime attempted is punishable by imprisonment in the state prison, the person guilty of the attempt shall be punished by imprisonment in the state prison for one-half the term of imprisonment prescribed upon a conviction of the offense attempted. However, if the crime attempted is willful, deliberate, and premeditated murder, as defined in Section 189, the person guilty of that attempt shall be punished by imprisonment in the state prison for life with the possibility of parole. If the crime attempted is any other one in which the maximum sentence is life imprisonment

or death, the person guilty of the attempt shall be punished by imprisonment in the state prison for five, seven, or nine years. The additional term provided in this section for attempted willful, deliberate, and premeditated murder shall not be imposed unless the fact that the attempted murder was willful, deliberate, and premeditated is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(b) If the crime attempted is punishable by imprisonment in a county jail, the person guilty of the attempt shall be punished by imprisonment in a county jail for a term not exceeding one-half the term of imprisonment prescribed upon a conviction of the offense attempted.

(c) If the offense so attempted is punishable by a fine, the offender convicted of that attempt shall be punished by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense attempted.

(d) If a crime is divided into degrees, an attempt to commit the crime may be of any of those degrees, and the punishment for the attempt shall be determined as provided by this section.

(e) Notwithstanding subdivision (a), if attempted murder is committed upon a peace officer or firefighter, as those terms are defined in paragraphs (7) and (9) of subdivision (a) of Section 190.2, and the person who commits the offense knows or reasonably should know that the victim is such a peace officer or firefighter engaged in the performance of his or her duties, the person guilty of the attempt shall be punished by imprisonment in the state prison for life with the possibility of parole.

This subdivision shall apply if it is proven that a direct but ineffectual act was committed by one person toward killing another human being and the person committing the act harbored express malice aforethought, namely, a specific intent to unlawfully kill another human being. The Legislature finds and declares that this paragraph is declaratory of existing law.

(f) Notwithstanding subdivision (a), if the elements of subdivision (e) are proven in an attempted murder and it is also proven that the attempted murder was willful, deliberate, premeditated, and admitted or found to be true by the trier of fact, the person guilty of the attempt shall be punished by imprisonment in the state prison for 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce this minimum term of 15 years in state prison, and the person shall not be released prior to serving 15 years' confinement.